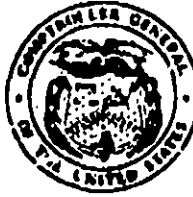


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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

*M. J. Boyle*  
*Proc I*

**FILE: B-167159**

**DATE: February 18, 1977**

**MATTER OF: Semiconductor Equipment Corporation**

**DIGEST:**

1. Navy initially requested proposals to design and fabricate combination "bonder" and "pull-tester"—machines used in assembly of integrated circuits—and, in addition, feedback quality monitor was required. During evaluation of proposals Navy determined that requiring feedback quality monitor was going too far beyond available technology and, therefore, eliminated that requirement and resolicited. In circumstances, protestor's contention that cancellation and resolicitation was without reasonable basis is without merit.
2. Contention, made after resolicitation, that Navy disclosed protestor's proprietary data in first solicitation is untimely under section 20.2(b)(1) of Bid Protest Procedures, 4 C.F.R. § 20.2(b)(1) (1976), since alleged impropriety was apparent prior to closing date for receipt of initial proposals under first solicitation.

This decision concerns the Semiconductor Equipment Corporation (SEC) protest against the cancellation of a request for proposals (RFP), in response to which it was the sole offeror in the competitive range, and resolicitation of a modification of the same requirement. In addition, SEC contends that its patent and proprietary rights were infringed by the Department of the Navy because information contained in the first solicitation was extracted from prior unsolicited proposals submitted by a firm later acquired by SEC.

The first solicitation, RFP N00123-76-R-1169 dated April 12, 1976, as amended by amendment 0001 dated April 27, 1976, requested proposals for the design and fabrication of a combination of two machines commonly used in the assembly of integrated circuits—small chips of semiconductor material fabricated to include the equivalent of several

thousand transistors within a single chip. Currently, due to the extremely small size of integrated circuits and their inherent complexity, electrical connections are generally made to the devices through very fine wires which are bonded by ultrasonic welding to the chip and its package. This operation is performed under a microscope on a machine known as a "bonder." After all connections are made, a second machine known as a "pull-tester" is employed to identify weak bonds, typically by pulling on them at a tension designed to break weak bonds and not affect acceptable bonds. The Navy, in issuing the first solicitation, wanted proposals to advance the state-of-the-art by incorporating the bonding and pull-testing operations into a single machine. In addition, the new proposed machine was to have a feature called a "feedback quality monitor" (FBQM). The FBQM was to be a device permitting detection and correction of bond failures during the actual bonding process.

Two offers were received in response to the first solicitation. After evaluation, only SEC's proposal was considered acceptable. During evaluation of the proposals, the Navy began to believe that the FBQM requirement tended to overshadow the prime effort desired and, furthermore, the FBQM process approach appeared to threaten a noticeable degradation to the basic concept. Instead of removing the FBQM requirement in negotiations with SEC, the Navy believed that cancellation and resolicitation was required since, in its view, the elimination of the FBQM requirement would constitute a substantial change in requirements and all potential offerors should be so advised.

SEC was advised by letter dated June 10, 1976, that the first solicitation was canceled. On July 15, 1976, SEC was advised that the reason for cancellation was inadequate specifications. SEC was also informed that the modified requirement would be reissued within 10 days. On July 21, 1976, the Navy issued RFP No. N00123-76-R-1699, deleting the FBQM requirement. On July 26, 1976, by amendment 0001, the Navy added the FBQM feature as a "highly desirable bonding feature." On July 26, 1976, SEC was aware of the effect of amendment 0001 and, after discussions with the Navy, SEC filed a protest with our Office on August 9, 1976, prior to the closing date for receipt of proposals under the second solicitation. Shortly thereafter, amendment 0002 was issued, deleting amendment 0001, thus returning the second solicitation to its initial requirements.

In response to the second solicitation four offers, including one from SEC, were received. Those offers are now being evaluated.

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SEC contends that the cancellation of the first solicitation was in violation of 10 U.S.C. § 2304(g) (Supp. IV, 1974) and Armed Services Procurement Regulation (ASPR) § 2-404.1(a) (1976). The ASPR section provides:

"The preservation of the integrity of the competitive bid system dictates that after bids have been opened, award must be made to that responsible bidder who submitted the lowest responsive bid, unless there is a compelling reason to reject all bids and cancel the invitation. \* \* \*

SEC states that our decisions, B-178282, July 27, 1973, and Infodyne Systems Corp., B-185481, July 12, 1976, 76-2 CPI 33, hold that provisions of ASPR § 2-404.1(a) apply to negotiated procurements. SEC also states that 10 U.S.C. § 2304(g) dictates that written and oral discussions shall be conducted with all responsible offerors who submit proposals within a competitive range, price and other factors considered.

SEC contends that, under Environmental Protection Agency, Request for Modification of GAO Recommendation, B-184194, July 19, 1976, 76-2 CPD 50, Rantec Division, Emerson Electric Co., B-185764, June 4, 1976, 76-1 CPD 360, and ASPR § 3-805.4(b) (1976), it would have been appropriate for the Navy to make changes in the first RFP's specifications by amendment rather than cancelling and resoliciting.

Further, SEC contends that, while ASPR § 3-805.4(b) permits cancellation and resolicitation of an RFP after the competitive range has been established when a change or modification is so substantial as to warrant complete revision of the solicitation, the FBQM feature was worth only 3 percent of the total evaluation factors and its deletion did not constitute a substantial change.

The Navy contends that the elimination of the FBQM feature was of sufficient magnitude in the context of this procurement to require resolicitation under ASPR § 3-805.4(b) and the full and free competition mandate of 10 U.S.C. § 2304(g). The Navy also contends that the test for proper resolicitation here is one of substantiality which is a

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matter to be left to the sound discretion of the contracting officer when, as here, his actions are reasonable.

The Navy argues that resolicitation was reasonable because upon a second look by the Navy's technical activity in concert with advice from a recognized expert in the bonding field--employed by the National Bureau of Standards--it was determined that the first solicitation was seeking far too much and more than was needed to assure a successful and workable product. The Navy notes that as a result of the resolicitation four proposals were received--representing an increase of 100 percent of proposals received in response to the first solicitation.

Finally, the Navy concludes the relative importance of the FBQM feature in the first solicitation is of little consequence since offers in competitive procurements sometimes are successful with a technical spread of less than 3 percent and such internal scoring schemes are for internal evaluation guidance purposes only and are properly committed to the sound discretion of the procuring activity.

While we have held that it may be appropriate to make some changes in an RFP's terms or specifications by amendment rather than cancellation and resolicitation (see, e.g., Kantec Division, Emerson Electric Co., supra), substantial changes in the specifications may justify cancellation of the RFP. 53 Comp. Gen. 139 (1973). Regardless of the particular factual situation, deciding whether to cancel an RFP is in the first instance a matter for the sound judgment and discretion of responsible agency officials. A decision to cancel is subject to objection upon review by our Office only if it is clearly shown to be without a reasonable basis. See Federal Leasing, Inc., 54 Comp. Gen. 872 (1975), 75-1 CPD 236. The same standard of review applies to an agency's determination of its minimum needs and to the agency's drafting of specifications which properly reflect those needs. Julia Research Laboratories, Inc., 55 Comp. Gen. 374 (1975), 75-2 CPD 232.

Here, to prevail, SEC must clearly show that the Navy's determination to resolicit was without a reasonable basis. We do not believe that SEC has met that burden. Furthermore, in the circumstances of this procurement, it is our view that the Navy's determination to cancel the first solicitation and issue the second

solicitation deleting the FBQM requirement was reasonable. In reaching this decision, we take particular note of the Navy's primary purpose in issuing the first and second solicitations--seeking to advance the state-of-the-art to produce a combination bonding and pull-testing machine; the fact that the FBQM feature was a step beyond the Navy's primary purpose; and the technical opinion from a bonding expert employed by the National Bureau of Standards that the FBQM feature should have been deleted from the first solicitation.

In addition, the decisions of this Office relied on by SEC do not support its position. In the Environmental Protection Agency decision, we stated the principle that a procuring agency's determination to cancel an RFP is subject to objection upon review by our Office only if it is clearly shown to be without a reasonable basis. There, while we had certain reservations and believed that the change could have been accomplished through amendment, we held that EPA's justifications for the proposed cancellation were not without a reasonable basis. In the Rantec Division, Emerson Electric Co., decision, the procuring agency deleted a "toxic gas testing" requirement by amendment. There, the protester contended that the agency should have canceled the RFP as a result of that deletion. We found the contention without merit because in the circumstances of that procurement it was our view that the agency reasonably determined the deletion of the testing requirement not to be so substantial as to require resolicitation.


SEC's second basis of protest is that in the first solicitation the Navy disclosed SEC's patent and proprietary rights relating to bonder technology. The Navy, again relying on a report from a recognized expert in this field employed by the National Bureau of Standards, argues that SEC has no basis to claim a proprietary right in any of the information contained in the first solicitation.

Section 20.2(b)(1) of our Bid Protest Procedures, 4 C.F.R. § 20.2(b)(1) (1976), provides that protests based upon alleged improprieties in any type of solicitation which are apparent prior to the closing date for receipt of proposals shall be filed prior to such closing date. Since SEC's protest is against an alleged impropriety in the first solicitation apparent prior to the closing date for receipt of initial proposals, SEC's protest had to be filed here

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prior to the closing date for receipt of initial proposals in order to be timely. University of New Orleans, B-184194, January 14, 1976, 76-1 CPD 22, and E. C. DeYoung, Incorporated, B-186539, July 26, 1976, 76-2 CPD 84. Therefore, SEC's contention that its proprietary data was disclosed by the Navy in the first solicitation will not be considered.

Accordingly, SEC's protest is denied.

  
Acting Comptroller General.  
of the United States